

FILED

10 SEP 16 AM 11:20

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:


DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NY NOURN,

Petitioner,

vs.

M. LATTIMORE,

Respondent.

CASE NO. 09-cv-2456 BEN (WVG)
ORDER DENYING CERTIFICATE
OF APPEALABILITY

Concurrently herewith, the Court entered judgment denying Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Effective December 1, 2009, this Court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Rule 11 foll. 28 U.S.C. § 2254; 28 U.S.C. § 2253; Fed.R.App.P. 22(b). For the reasons set forth below, the Court **DENIES** certificate of appealability as to all claims asserted by Petitioner in her Petition for Writ of Habeas Corpus.

A certificate of appealability ("COA") is authorized "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2). The applicant must meet the "substantial showing" standard with respect to each issue he or she seeks to raise on appeal. *Lambright v. Stewart*, 220 F.3d 1022, 1024 (9th Cir. 2000). Petitioner can meet the threshold of "substantial showing of the denial of a constitutional right" by demonstrating that: (1) the issues are debatable among jurists of reason; (2) a court could resolve the issues in a different manner; or (3) the questions are adequate to deserve encouragement to proceed further. *Lambright*, 220 F.3d at 1024-25 (9th Cir. 2000), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), and *Barefoot v. Estelle*, 463 U.S.

1 880, 893 n.4 (1983). The purpose of this standard is "to promote Congress' intent to 'to prevent
2 frivolous appeals from delaying the States' ability to impose sentences. . .' while at the same time
3 protecting the right of petitioners to be heard." *Lambright*, 220 F.3d at 1025 (citing *Barefoot*, 463 U.S.
4 at 892).

5 In this case, the Court finds that reasonable jurists would not find it debatable that Petitioner
6 was denied a constitutional right, nor could a court resolve the issues in a different manner. *Slack*, 529
7 U.S. at 484; *Lambright*, 220 F.3d at 1026. Additionally, the questions are not adequate to deserve
8 encouragement to proceed further. (*Id.*) Accordingly, the Court **DENIES** certificate of appealability
9 as to all claims asserted by Petitioner in her Petition for Writ of Habeas Corpus.

10 **IT IS SO ORDERED.**

11 DATED: September 15, 2010


12
13 **Hon. Roger T. Benitez**
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28